

BOARD OF FORESTRY AND FIRE PROTECTION

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**NOTICE OF DECISION****FOR AMENDMENTS TO THE FOREST PRACTICE RULES****Large Old Trees****DESCRIPTION**

This *Notice of Decision* is pursuant to Title 14, California Code of Regulations section 1145 (14 CCR § 1145), and pertains to the amendments of Forest Practice Rules in Title 14 CCR affecting timber harvesting throughout the State.

The Board of Forestry and Fire Protection adopted amendments to the following rule sections:

§ 1038	Exemption
§ 1104.1	Conversion Exemptions

The Z'berg-Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) establishes the Legislature's concern throughout the State relating to the use, restoration, and protection of the forest resources. The Legislature further recognized that these forest resources provide watershed protection and fisheries maintenance. The Legislature declared that it is the policy of the State to encourage responsible forest management that considers the public's need for watershed protection and fisheries (ref. PRC section 4512). Furthermore, the Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. This system is to assure the productivity of timberlands and the goal of maximum sustained production of high quality timber products. It is also intended to give consideration to values related to watershed, wildlife, and fisheries (ref. PRC section 4513). Public Resources Code Section 4551 gives the Board authority to adopt such rules and regulations which will enable it to carry out its responsibilities to protect fish and water resources, including but not limited to streams, lakes and estuaries.

Public Resources Code Section 4584 permits the Board to exempt specified activities from the Forest Practice Act (Act) or Portions thereof if those activities are consistent with the Act and are within specific forest management activities listed by the Legislature. The Board has chosen to implement and make specific this option in 14 CCR §§ 1038 and 1104.1.

Through 14 CCR 1038 the Board has implemented an exemption of certain forest management activities from the Timber Harvesting Plan (THP) preparation and submission requirements (PRC 4581) and from the completion and stocking report requirements (PRC 4585 and 4587). To implement this the Board has described the list of forest activities provided for in PRC 4584 and limited those activities to a level where there is not a reasonable possibility of a significant adverse environmental impact (14 CCR §§ 1142 and 1144).

The exemption process is ministerial and provides little time for review and analysis of potential impacts by the Director or other State agencies. Five (5) working days are provided for the Director to determine if the exemption form is accurate, complete, and in proper order (14 CCR 1038 (e)). This also is the time provided the Director to check with other State agencies for concerns about the proposed activities. A portion of the Director's review is to determine if the proposed activities can be conducted in compliance with the rules of the Board and if the proposed exemption is the appropriate harvesting permit.

Through 14 CCR 1104.1 the Board implemented another exemption of certain forestland being converted to non-timber management uses from the Timberland Conversion (TLC) process (PRC 4621-28), the THP preparation and submission process (PRC 4581), the completion and stocking report requirements (PRC 4585 and 4587), and the Stocking Standards (PRC 4561). The Board chose to include a one-time less than three (3) acre conversion, construction of public agency right-of-ways, and maintenance of those right-of-ways within this exemption. These activities are also implemented under Board limitations to ensure there is no reasonable possibility of a significant adverse environmental impact (14 CCR §§ 1142 and 1144) and that those activities are consistent with the Act.

The Board was presented with information during 1999 and 2000 Board meetings that led them to believe that a further limitation was needed for both of the exemptions described above. The exemption process was being used to avoid the THP or TLC process for the harvesting of Large Old Trees. Individual or small groups of Large Old Trees were being removed under exemptions. This is often appropriate for safety, land use, or salvage reasons. Also, the landowner may simply wish to harvest the tree(s) for the economic value. That is the purpose of the exemption process, as long as the removal of the tree(s) cannot reasonably result in a significant adverse environmental impact and is consistent with the purposes of the Act.

The Board directed it's Interim Committee to review this information and return with a recommendation on whether the current activities exempted were appropriate and if further limitations for the harvest of Large Old Trees were needed. The Committee considered this charge for several months and returned to the Board with recommended revisions to the existing regulatory language for 14 CCR 1038 and 1104.1. The Board directed staff to prepare a 45 Day Notice of a Public Hearing in accordance with the Administrative Procedures Act (Government Code §§ 11340 et. Seq.). The language recommended by the Committee prohibited the harvest of Large Old Trees, as defined in the text, except as provided for in proposed 14 CCR §§ 1038(h) and 1104.1(i).

14 CCR § 1038 **Exemption**

The change to this regulation removes any tree that existed before 1800 AD and is greater than sixty (60) inches in diameter at stump height for Sierra or Coastal Redwood, and forty-eight (48) inches in diameter at stump height for all other trees from the exemption process. However some of these trees may be harvested under this exemption with certain limitations.

The limitations are contained in subsection (h) and are: 1) are not critical for Late Succession stands, 2) provided for in a specifically listed discretionary plan, 3) marked by a Registered Professional Forester (RPF), 4) removed for safety or property hazard reasons, 5) removed for building construction, and/or 6) dead or likely to die in one (1) year.

14 CCR § 1104.1 **Conversion Exemption**

The regulatory language changes for the conversion exemption are the same as those for the Exemption from the THP process (14 CCR 1038). Language describing which Large Old Tree have harvesting limitations are provided in the first paragraph. The limitations for the harvest of those trees are included in 14 CCR 1104.1(i).

ALTERNATIVES

The Board has considered the following three alternatives:

1. Retain existing regulations without any change.

The adoption of this alternative would not address the public problem and other conditions or circumstances the proposed regulatory action was intended to address as specified in the *Initial Statement of Reasons*.

2. Adopt the regulations as proposed in the August 24, 2001 15-Day Notice with consideration given to public and other agency comments.

The adoption of this alternative would allow the Board to adopt modified rules after receiving input on this proposal. Alternative 2 was determined to be the preferred alternative by the Board, and was adopted.

3. Retain existing regulations without any changes and institute incentives for landowners to retain Large Old Trees voluntarily.

The implementation of this alternative was not practical until further development occurs on implementing landowner incentives. Regulatory action must be taken for the protection of Large Old Trees until such time and land owner incentives such as regulatory relief, tax credits, or public an/or private easements are established.

SUMMARY OF POTENTIAL IMPACTS

The Board has not identified any adverse environmental effects from the proposed action.

FINDINGS

The Board finds that there are no adverse environmental effects from the proposed action for the following reasons:

- 14 CCR 1038 (e) is an existing subsection. It provides for a risk analysis. This subsection provides other agencies, the public and the Department time (five days) to determine if the ministerial exemption is accurate and complete. This includes a determination of the project qualification as an exemption. The Director concludes that the exemption will not reasonably have a significant effect on the environment when done in compliance with the rules of the Board. Where such a potential exists, an exemption would have to be returned by the Director to the applicant as not being accurate or complete.
- The regulatory proposal adopted by the Board does not allow harvesting of large old trees under an exemption unless “the tree is not critical for the maintenance of a Late Succession Stand”. This standard requires that someone wishing to submit an

exemption to remove one or more large old trees check with those possessing the professional knowledge to make a determination that the tree(s) is not necessary to retain Late Succession values. That is the same type of safeguard provided in the THP process.

- The regulatory proposal adopted by the Board requires that an RPF not only provide a written justification but physically mark the tree(s) to be harvested. This assures that a tree to be harvested is connected to an individual's professional license and livelihood. A tree can not be marked that , if harvested, does not comply with the rules of the Board.
- The Board proposal requires an RPF or certified arborist to determine if a tree affected by a disease or insect is stressed to the point of dying within a year. The Board chose to speak to the ultimate effect of the insect or disease attack, which is dying. The harvesting of large old trees under an exemption does not relieve compliance with the rules of the Board. Article 9, Wildlife Protection Practices, states when snags (dead trees) may be removed and when they must be retained for wildlife benefits. This includes considerations of a balance between public safety, property damage and wildlife habitat needs.
- A greater involvement of the Registered Professional Forester (RPF) in the exemption process for the purpose of assuring timber operations are limited to meet the intent of the Board for this ministerial permit. That intent is low impact timber harvesting.
- Some insect or disease occupies older trees. Due to their age they are declining but may live many more years, even with a disease or insect issue. Endemic populations of insects exist in the second growth stands as well as the older tree stands. Epidemics are caused most often by changes in weather conditions, which are extremely favorable to the reproductive cycle of the pest. It has little to do with the age of the host.

FINDINGS ON COSTS

The Board finds there are no additional costs to any state agency, any state mandated costs to local agencies of government or school districts that require reimbursement under Part 7, Div. 4 Sec. 17500 GC because of any duties, obligations or responsibilities imposed on state or local or agencies or school districts. This action can be accomplished with no significant additional net cost, or where such costs exist, they are entered into voluntarily.

This order does not create any savings or additional costs of administration for any agency of the United States Government over and above the program appropriations made by Congress.

A. Costs to State Agencies

The Board has determined that this action will not have a net increase in costs to state agencies that have been identified.

B. Local Agencies

The Board has determined that this action will not have a net increase in costs to local government, school districts or other local agencies.

C. Costs to Affected Persons

The Board has determined that this action will not have a significant net increase in costs to affected persons that have been identified.

The Board did consider the economic impacts on landowners and small business of the regulatory proposal. A more detailed statement of values considered will be in the Final Statement of Reasons. Economic impact was brought forward for discussion continually in the Board's Interim Committee. Various values and levels of impact were discussed. In the written comments and through testimony to the Board during the hearing, comments and information were brought forward on the economic impacts.

The largest impact on retained landowner value per tree lies with the smaller landowner. Testimony received by the Board was based on the data available from the California Board of Equalization. The value of inland conifers with a 48" stump diameter was estimated to be between \$1,400 and \$2,800. The coast redwood value of a single tree of 60" diameter at the stump was estimated to be \$3,300. For a single tree on a small ownership the cost of an RPF to prepare written justification and mark a single tree was estimated between \$400 - \$500. Under these assumptions the lowest value to be received by a landowner for a single large old tree would be approximately \$900. The value received by the landowner would obviously increase if the exemption applied to the harvest of multiple large old trees. The time required by an RPF for a small ownership would not have a dramatic increase to evaluate several additional trees; therefore little cost is added compared to additional value received.

The Board in 14 CCR 895.1 provides the definition of "significance". This definition also applies to economic factors. The standard is whether it is feasible to carry out the harvesting with the cost of the regulation included in the analysis. Given the values referred to above it would be feasible for a landowner to harvest a tree with a minimum of \$900 value remaining. This does not include the question of whether the landowner would choose to harvest if other non-monetary values are involved in the final decision. As such the economic impact would not be significant.

D. Costs to Businesses and Small Businesses

The Board has determined that this action will not have a significant net increase in costs to businesses and small businesses that have been identified. Refer to C. above

E. Competitiveness Considerations

The Board has determined that this action will not have a significant impact on the ability of California businesses to compete with businesses in other states.

F. Creation or Elimination of Jobs or Businesses

Adoption of these regulations is not likely to create or eliminate jobs within California.

G. Impacts on Housing

The Board has determined that this action will not have a significant affect housing costs.